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Nos. 96-1654 and 96-8837

In the Supreme Court of the United States

OCTOBER TERM, 1997

FRANK J. MUSCARELLO, PETITIONER

v.

UNITED STATES OF AMERICA

DONALD E. CLEVELAND AND
ENRIQUE GRAY-SANTANA, PETITIONERS

v.

UNITED STATES OF AMERICA

*ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a defendant "carries" a firearm within the meaning of 18 U.S.C. 924(c) if the defendant has it with him in a locked glove compartment or the trunk of a vehicle in order to facilitate a drug transaction.

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OPINIONS BELOW

The opinion of the court of appeals in No. 96-1654 (96-1654 Pet. App. 1a-7a) is reported at 106 F.3d 636. The opinions of the district court (96-1654 Pet. App. 8a-11a, 12a-13a) are unreported. The opinion of the court of appeals in No. 96-8837 (96-8837 J.A. 86-114) is reported at 106 F 3d 1056. The opinions of the district court (96-8837 J.A. 45-57, 58-71) are unreported.

JURISDICTION

The judgment of the court of appeals in No. 96-1654 was entered on February 13, 1997. The petition for a

writ of certiorari was filed on April 18, 1997, and was granted on December 12, 1997. The judgment of the court of appeals in No. 96-8837 was entered on February 18, 1997. The petition for a writ of certiorari was filed on April 30, 1997, and was granted on December 12, 1997. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. 924(c)(1) is reproduced in pertinent part in an appendix to this brief.

STATEMENT

On May 25, 1995, petitioner Muscarello entered a plea of guilty in the United States District Court for the Eastern District of Louisiana to one count of conspiracy to distribute marijuana, in violation of 21 U.S.C. 846, one count of distributing marijuana, in violation of 21 U.S.C. 841(a)(1), and one count of using or carrying a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c). Before petitioner was sentenced, he moved to quash or dismiss the Section 924(c) count of the indictment, in light of this Court's decision in *Bailey* v. *United States*, 516 U.S. 137 (1995). The district court granted the motion (96-1654 Pet. App. 8a-11a), and the court of appeals reversed. *Id.* at 1a-7a.

Following the entry of guilty pleas in the United States District Court for the District of Massachusetts, petitioners Cleveland and Gray-Santana were each convicted on one count of attempting to possess cocaine with intent to distribute it, in violation of 21 U.S.C. 846, and one count of using or carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c). Petitioners were each sentenced to a total of 180 months' imprisonment, to be followed by five years' supervised release. The court of appeals affirmed. 96-8837 J.A. 86-114.

1. a. On May 25, 1995, petitioner Muscarello entered a plea of guilty to, *inter alia*, using or carrying a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c). 96-1654 J.S. 6-10. At the plea hearing, the government submitted a factual statement signed by Muscarello's attorney. *Id.* at 11-13. The statement established that, following negotiations with a cooperating individual (CI) and an undercover agent of the Drug Enforcement Administration (DEA), Muscarello arranged for the delivery of a total of eight pounds of marijuana in two separate transactions. Both the negotiations and the payment for the marijuana took place in Muscarello's Ford pick-up truck. In the first transaction, Muscarello led the CI and the DEA agent to a location where marijuana had been left in a plastic bag at the side of the road. In a second transaction on the same day, Muscarello again led the CI and the DEA agent to a certain location, and upon arrival, Muscarello removed plastic bags containing marijuana from his vehicle. Following Muscarello's arrest, a loaded firearm was found in the locked glove compartment of his truck. *Id.* at 12; 96-1654 Pet. App. 8a. The signed factual statement asserted that this firearm was "knowing[ly] possessed in [petitioner's] vehicle and carried for protection in relation [to] the above described drug trafficking offense." 96-1654 J.A. 12. At the plea hearing, Muscarello attested under oath to the accuracy of the written factual statement. *Id.* at 24.

b. On March 7, 1996, before Muscarello was sentenced, he filed a motion in the district court pursuant to Federal Rule of Criminal Procedure 12(b)(2) to

quash or dismiss the Section 924(c) count of the indictment. Muscarello argued that the charge was legally defective in light of this Court's decision in *Bailey*. 96-1654 Pet. App. 2a. The government opposed the motion on the ground that the factual statement established that petitioner had "carried" the firearm within the meaning of Section 924(c). Following a hearing, the district court granted the motion to dismiss. *Id.* at 8a-11a.

The court acknowledged that Muscarello admitted in the factual statement that he knowingly possessed and carried the firearm in his vehicle for protection in relation to his drug trafficking offenses. 96-1654 Pet. App. 9a-10a. The court relied instead, however, on the following statement from the presentence investigation report:

> As to the weapon, [petitioner] does not deny his possession of the pistol. The pistol was in the glove compartment of his truck where it had been for a long period of time. He denies any conscious decision to carry the gun in relation to the marijuana sale, and stated that he carried it in relation to his job with the Tangipahoa Parish Sheriff's Office as a balif [sic] at the Courthouse in Amite.

Id. at 10a. The court accordingly concluded that:

> [petitioner] did not knowingly possess the firearm *in relation* to a drug-trafficking crime. To the contrary, [petitioner], his employment background considered, knowingly possessed the firearm in the glove compartment of his vehicle in furtherance of his job requirements and not for active employment in the charged transaction.

Ibid. The district court therefore granted Muscarello's motion to dismiss the Section 924(c) count, although it did not rely on *Bailey* in doing so. 96-1654 Pet. App. 10a-11a.

The district court denied the government's motion for reconsideration. 96-1654 Pet. App. 12a-13a. The court again acknowledged that Muscarello had admitted carrying the gun for protection in relation to his drug trafficking, but the court noted that "this is a pre[-]*Bailey* composition by the government and a pre[-]*Bailey* consideration by [petitioner] and his counsel." *Id.* at 12a. Again citing the above-quoted language from the presentence report, the district court reaffirmed its conclusion that Muscarello "did *carry* a firearm in the [locked] glove compartment of his vehicle, but not *in relation* to the commission of a drug trafficking crime." *Id.* at 13a.

c. The court of appeals reversed in a per curiam decision. 96-1654 Pet. App. 1a-7a. The court first noted that, because *Bailey* did not address the "carrying" prong of Section 924(c), its prior "carrying" jurisprudence remained valid. *Id.* at 4a. Under the court's pre-*Bailey* decision in *United States* v. *Pineda-Ortuno*, 952 F.2d 98, 104 (5th Cir.), cert. denied, 504 U.S. 928 (1992), "the 'carrying' requirement of § 924(c) is met if the operator of the vehicle knowingly possesses the firearm in the vehicle during and in relation to a drug trafficking crime." 96-1654 Pet. App. 4a-5a.

The court held that the district court had erred in two respects in finding that the "in relation to" element of the offense was not satisfied: first, by discrediting as a "pre-*Bailey* composition" the factual statement in which Muscarello had concurred, and second, by relying on Muscarello's "post-conviction,

self-serving declaration to the probation officer * * * regarding his subjective intent in possessing the pistol in the truck." 96-1654 Pet. App. 5a. Those errors, the court concluded, required reversal of the district court's decision. *Id.* at 6a-7a.

The court also reaffirmed *Pineda-Ortuno*'s holding that "[w]hen a vehicle is used, 'carrying' takes on a different meaning from carrying on a person because the means of carrying is the vehicle itself." 96-1654 Pet. App. 6a. Thus, the court reasoned, "the fact that [petitioner's] glove compartment was locked does not prevent conviction." *Ibid.*

2. a. Petitioners Cleveland and Gray-Santana were charged, along with Juan Rodriguez and Ramon Vasquez, in a five-count superseding indictment with various narcotics and weapons offenses. At petitioners' respective plea hearings, the government presented a summary of its evidence that established the following facts, in which petitioners concurred. 96-8837 J.A. 9-16, 21-27.

Before October 18, 1994, petitioner Gray-Santana agreed with Rodriguez to purchase between five and eight kilograms of cocaine. Rodriguez arranged to procure the cocaine and transport it to Boston. Petitioners Gray-Santana and Cleveland then formulated a plan to steal some of the cocaine from Rodriguez, rather than purchase it. Pursuant to their plan to steal the cocaine, petitioners obtained weapons. 96-8837 J.A. 46-47, 59. At his guilty plea hearing, Cleveland admitted that for the purpose of carrying out the theft, he and Gray-Santana "assembled three weapons, placed them in a Louis Vuitton bag, [and] put the bag in [a] car" on the day of the planned transaction. *Id.* at 13, 14-16. Gray-Santana admitted

that he had purchased one of the weapons earlier that day. *Id.* at 26, 27.

In the meantime, DEA agents were conducting surveillance of a known drug trafficker at an apartment complex in Connecticut. The agents observed four individuals, including Rodriguez and Vasquez, leaving the complex. Rodriguez drove a white Isuzu, and Vasquez and two others drove a Lexus. The DEA agents followed the four men to Boston, where they observed the driver of the Lexus talking with Gray-Santana, who was sitting in a white Mazda driven by Cleveland. All three vehicles were later observed parked close together on St. Stephens Street in Boston. At that time, Vasquez was sitting in the back of the Mazda, and Gray-Santana was in the Isuzu with Rodriguez. As the vehicles attempted to leave the area, the DEA agents stopped and searched both the Mazda and the Isuzu. Six kilograms of cocaine were found in a hidden compartment of the Isuzu, and three handguns were found in the trunk of the Mazda. 96-8837 J.A. 46-47, 59-60. Two of the three handguns were semiautomatic, and all were loaded with live ammunition. *Id.* at 12, 25.

b. Petitioners Cleveland and Gray-Santana entered guilty pleas, respectively, on July 17, 1995, and July 21, 1995. 96-8837 J.A. 60, 47. After this Court decided *Bailey*, each petitioner sought relief from his Section 924(c) conviction. On January 11, 1996, after he had filed a notice of appeal from his final judgment of conviction, Cleveland filed a Motion for Correction of Sentence or Other Appropriate Relief, pursuant to Federal Rule of Criminal Procedure 35(c) and 28 U.S.C. 2255. 96-8837 J.A. 58. On December 8, 1995, after he had been sentenced but before a final judgment of conviction was entered, Gray-Santana filed a

similar motion. *Id.* at 45. Gray-Santana also sought to withdraw his plea. *Ibid.*[1]

The district court held that, in light of *Bailey*, petitioners' Section 924(c) convictions could not be sustained under the "use" prong of the statute. 96-8837 J.A. 48-49, 62-63. The court found, however, that the dictionary definition of "carry" reached petitioners' conduct of transporting firearms in a vehicle. *Id.* at 50, 64-65. The court rejected petitioners' contentions that First Circuit authority required that the weapon be immediately accessible to the defendant in order to sustain a conviction for "carrying" it. *Id.* at 51-55, 66-70. Instead, the court found that the evidence in the case was "a prime example of using a vehicle to carry firearms in relation to a drug trafficking crime," and it denied petitioners' motions. *Id.* at 56,70.

c. The court of appeals affirmed. 96-8837 J.A. 86-114. At the outset, the court agreed that petitioners' convictions could not be sustained under the "use" prong of Section 924(c) after *Bailey*, as there was no evidence that the firearms had been actively employed. *Id.* at 104. The court held, however, that petitioners had "carried" the firearms within the meaning of Section 924(c).

[1] The district court noted that, because Cleveland filed his motion more than seven days after sentencing, he could not obtain relief under Rule 35(c). 96-8837 J.A. 61. The court stated, however, that Cleveland could proceed under Section 2255. *Ibid.* With respect to Gray-Santana, the district court "treat[ed] the pending motion as a motion to reconsider sentencing, and, in the alternative, to withdraw his plea," and the court "conclude[d] that it is appropriate to decide defendant Gray[-Santana]'s challenge to the sentence on the merits." *Id.* at 45.

The court of appeals reasoned that a firearm can be "carried" in a vehicle, as well as on a suspect's person. 96-8837 J.A. 105-106. The court also held, in agreement with several other circuits, that a firearm transported in a vehicle need not be immediately accessible to the defendant in order to be "carried" under Section 924(c). *Id.* at 106-107. After considering the ordinary meaning of "carry," the court found that the term "clearly includes the transport of a firearm by car; the concept of whether or not the carried item is within reach plays no part in the definition." *Id* at 108. The court recognized that in some circumstances, "a firearm's immediate accessibility to a defendant might be relevant to determining whether or not he was carrying it 'during and in relation to' a drug trafficking crime," but the court concluded that that statutory element was satisfied in this case. *Id.* at 110. Finally, the court analyzed decisions of the Second, Sixth, and Ninth Circuits—which had held that immediate accessibility is required under the "carry" prong—and concluded that the reasoning of those courts was "unpersuasive." *Id.* at 111-113.[2]

SUMMARY OF ARGUMENT

Section 924(c)(1) punishes any person who "uses or carries" a firearm during and in relation to a drug trafficking offense. Section 924(c)'s prohibition on "carr[ying] a firearm" includes the act of carrying a firearm in a vehicle. That conclusion follows from the ordinary meaning of the term "carry," as confirmed

[2] The court of appeals rejected petitioners' Fourth Amendment challenge to the search of the vehicles, 96-8837 J.A. 99-1100, and Gray-Santana's claims that a statement he had made to a DEA agent was involuntary and taken despite his previous invocation of his right to counsel, *id.* at 100-103.

by the primary entries for the word in every authoritative dictionary. Although to "carry" firearms also includes carrying firearms on one's person, there is no basis for limiting the term in that way. Petitioners cite no court anywhere that has adopted their suggestion that the unqualified word "carry" in a firearms statute like Section 924(c) is restricted to carrying on the person. Nor is there any basis in any standard dictionary definition to limit the term "carry" to instances in which the item carried is immediately accessible to the person carrying it. Although accessibility may be of relevance in analyzing the "in relation to" element of Section 924(c), it has nothing to do with whether a firearm is "carried" for purposes of Section 924(c).

The legislative history of Section 924(c) confirms that, when Congress first adopted the statute with its "carry" prohibition, Congress intended no restriction on the means by which the firearm could be carried. The debates surrounding the enactment of Section 924(c)'s "carry" prohibition make the purpose of the statute clear: to give offenders who intend to commit Section 924(c)'s predicate offenses a powerful incentive to leave their guns at home. Under petitioner's approach, however, that incentive would disappear so long as the offender is careful to remove the firearm from his person and place it in his car. The evidence surrounding the enactment of Section 924(c) does not support such an incongruous construction. Nor did Congress intend to eliminate the incentive so long as the offender placed the firearm in a vehicle so that it would be out of immediate reach until the time it was needed—although that would be the result of adopting the "immediate accessibility" construction articulated by two courts of appeals.

Congress's intent is also demonstrated by its consistent use of the term "carry firearms" in dozens of statutes to refer to carrying—sometimes out of the range of immediate access—in a vehicle as well as on the person. Had Congress intended to adopt an additional "on the person" limitation, established legal terms for doing so were ready at hand. State concealed weapons statutes, for example, almost always add the qualification "on the person" and/or "in a vehicle" to their basic "carry" prohibition. Those statutes are drafted in that way precisely because the word "carry" is most naturally taken to refer to both means of carrying.

Petitioners rely on the stiff penalty scheme in Section 924(c) as an indication that Congress desired an extraordinarily narrow construction of the term "carry." That reliance is misplaced, since the severity of the penalty scheme merely shows Congress's determination to accomplish its deterrent purpose. In any event, Congress originally used the word "carry" in Section 924(c) at a time when the statute imposed much less severe sanctions. Petitioners also repeatedly argue that the fact that isolated comments in the legislative history refer to carrying on the person establishes a congressional intent to limit the statute in that way. But the fact that Section 924(c) does apply to carrying on the person, as indicated by those comments, in no way suggests that it does not apply to carrying in a vehicle. Finally, the rule of lenity can be of no assistance to petitioners here, since that rule does not require the adoption of every proffered narrow construction of each term in a criminal statute. Where, as here, the ordinary meaning of a statutory term is the only meaning that is consistent with the statutory purpose and with the way Congress

uses that term in other contexts, the rule of lenity has no application.

ARGUMENT

A FIREARM IS "CARRIED" WHENEVER IT IS TRANSPORTED IN A VEHICLE, REGARDLESS OF WHETHER IT IS WITHIN THE DEFENDANT'S IMMEDIATE REACH.

A. The Ordinary Meaning Of The Word "Carry" Includes Carrying By Vehicle As Well As On The Person

Under 18 U.S.C. 924(c), a person commits a criminal offense if that person "during and in relation to any crime of violence or drug trafficking crime * * * uses or carries a firearm." 18 U.S.C. 924(c)(1). Congress did not define "carries" in Section 924(c). The term therefore must be construed "in accord with its ordinary or natural meaning." *Smith* v. *United States*, 508 U.S. 223, 228 (1993) (analyzing "use" prong of 18 U.S.C. 924(c)); see also *Perrin* v. *United States*, 444 U.S. 37, 42 (1979) (ascribing ordinary meaning to undefined words is "[a] fundamental canon of statutory construction").

1. Major dictionaries show a remarkable unanimity in expressly referring *both* to movement via a vehicle *and* to movement on one's person in the primary definition of the term "carry." According to *Webster's New International Dictionary of the English Language* 412 (2d ed. 1958)—an authoritative dictionary that was available when Section 924(c)'s "carry" prohibition was first enacted in 1968 and on which this Court relied in *Smith*, see 508 U.S. at 228-229, and in *Bailey* v. *United States*, 516 U.S. 137, 145 (1995)—the first definition of the term "carry" is "[t]o convey, or transport, while supporting, originally in a cart or car, hence in any manner; to bear; to transfer; to transmit; to take." As that definition makes clear, not only does the term "carry" include carrying by means of a vehicle, but the term originally bore that reference as its primary meaning. See also *Webster's Third New International Dictionary, Unabridged* 343 (1986) ("carry" derived from the French "carier," meaning "to transport in a vehicle").[3]

The other major, authoritative dictionary of American English available in 1968 similarly makes clear that an item may be carried either in a vehicle or on one's person. According to *The Random House Dictionary of the English Language* 227 (1966), the first definition of the term "carry" is "to move while supporting; convey; transport." Of the two examples of usage given in that dictionary, one refers to carrying on the person ("*He carried her for a mile in his arms.*", *ibid.*) and the other refers to carrying via a vehicle ("*This elevator cannot carry more than 10 persons.*", *ibid.*). The more recent edition of the same dictionary similarly defines "carry" in terms that have clear application to carrying both in a vehicle

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[3] The most recent edition of the same dictionary similarly lists, as the first definition for "carry," a meaning that specifically refers to movement via a vehicle, as well as on one's person:

> to move while supporting (*as in a vehicle* or in one's hands or arms): move an appreciable distance without dragging: sustain as a burden or load and bring along to another place.

Webster's Third New International Dictionary, Unabridged 343 (1986) (emphasis added).

and on the person.[4] In short, the primary definition of the term "carry," which as the first one listed is "the most frequently encountered meaning[]," *id.* at xxix, cannot be read to have the restrictive meaning ascribed to it by petitioners, which would exclude movement on a vehicle.

It is true, as petitioners observe (96-1654 Pet. Br. 9; 96-8837 Pet. Br. 9), that the term "carry" may refer to the transportation of an object in a pocket or otherwise on one's person. That is clear from the primary definition of the term given above. But that provides no basis for arguing that Congress intended to use the term "carry" in a way that was *limited* to carrying on the person. Thus, the edition of *Webster's New International Dictionary* available in 1968 lists, as its third definition of the term "carry,"

> To support; to sustain; specif.: * * * To have or hold as a burden while moving from place to place; to have upon or about one's person; to contain; hold; bear about; as, to *carry* a wound; to *carry* an unborn child.

Id. at 412. The same dictionary defines "carry arms" to mean "[t]o bear weapons; to serve as a soldier." *Ibid.* Those definitions indicate that "to carry firearms" *may* refer to bearing arms on the person. They provide no support, however, for petitioners' contention that the term does *not* refer to carrying by other means, such as in a vehicle. To the contrary, the examples given ("to *carry* a wound" or "to *carry*

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[4] The first definition given is "to take or support from one place to another; convey; transport." *The Random House Dictionary of the English Language, Unabridged* 319 (2d ed. 1987). The same two examples used in the 1966 edition are repeated in the 1987 edition.

an unborn child") appear to use the word in a different sense from petitioners' "on the person" construction. And even the definition of "to carry firearms" suggests service as a soldier—once again a context that has little to do with Section 924(c).

The other major authoritative dictionary available in 1966 similarly does not support petitioners' argument. The 1966 edition of the *Random House Dictionary* lists, as the second meaning of the term, "to wear, hold, or have around one: *He carries his change in his pocket. He carries a cane.*" *Id.* at 227. That definition does not mention weapons or firearms. It thus provides no support for petitioners' contention that "carry," when used with the word "firearm" as in Section 924(c), refers only to carrying on the person and could not refer to other means of carrying as well.

2. Much the same conclusion emerges from *Black's Law Dictionary*, the authority on which petitioners place their primary reliance. Like the general purpose dictionaries cited above, the 1968 edition of *Black's* defines "carry" to refer to carrying both on the person and in a vehicle:

> To bear, bear about, sustain, transport, remove, or convey. To have or bear upon or about one's person, as a watch or weapon;—locomotion not being essential.

Black's Law Dictionary 269 (rev. 4th ed. 1968). That definition recognizes that firearms may be carried either on the person or through other means. It is therefore fully consistent with the definition of "carry" to include carrying in a vehicle.

Petitioners place their major reliance on an additional entry in *Black's* for the term "carry arms

or weapons." See 96-1654 Pet. Br. 10; 96-8837 Pet. Br. 10, 11 n.4, 14 n.9, 17. That entry reads:

> To wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. State v. Carter, 36 Tex. 89; State v. Murray, 39 Mo. App.128.

Black's Law Dictionary 270 (rev. 4th ed. 1968).[5] Of course, the fact that "carry" may be used in this sense in no way suggests that Congress intended this to be the *exclusive* meaning of the word, nor does *Black's Law Dictionary* so imply. But in any event, the two cases cited in the *Black's Law Dictionary* entry demonstrate that the entry was not intended to be authority for the argument that the word "carry," as used in Section 924(c), refers *solely* to carrying on the person.

In both of the cases cited in the *Black's Law Dictionary* entry for "carry arms or weapons," a defendant was convicted under a nineteenth century statute that, as is typical of state concealed weapons statutes both at that time and today, see pp. 34-39, *infra*, expressly prohibited carrying concealed weapons *on the person*. See *State* v. *Murray*, 39 Mo. App. 127, 128 (1890) ("The defendant was indicted * * * for carrying concealed *upon his person* a dangerous and deadly weapon.") (emphasis added); Mo. Rev. Stat.

[5] The quoted definition is from the edition of *Black's Law Dictionary* that was available in 1968, when Section 924(c) was enacted. The most recent, 1990 edition, which petitioners cite instead, gives an identical definition, but it omits the case citations. As we discuss in text below, those citations are of great value in understanding the definition.

§ 3502 (1889) (statute prohibiting a person from "carry[ing] concealed *upon or about his person* any deadly or dangerous weapon") (emphasis added); *State* v. *Carter*, 36 Tex. 89, 89 (1871) (defendant indicted for carrying a weapon "about his person"); 1879 Tex. Crim. Stat. tit. IX, art. 318 (Penal Code) (statute prohibiting a person from "carry[ing] *on or about his person*, saddle, or in his saddle bags, any pistol") (emphasis added). By expressly qualifying the word "carry" with the term "on or about his person" or "upon his person," the legislatures that enacted those statutes showed the common understanding that the term "carry," as used in Section 924(c) without that qualification, would have a broader meaning. The *Black's Law Dictionary* entry may provide useful guidance in cases involving other issues about the meaning of the word "carry."[6] But it provides no support whatever for petitioners' claim that "carry," as used in Section 924(c) without the qualifying phrase "on the person," is nonetheless limited to carrying on the person.[7]

[6] For example, *Murray* involved the legal question whether the Missouri statute required proof that the defendant had the "intention to use [the firearm] as a weapon." 39 Mo. App. at 131. *Carter* involved the question whether an allegation in an indictment that the defendant "did have about his person a certain pistol" was sufficient under the Texas statute if it "did not charge that * * * defendant did 'carry' the weapon." 36 Tex. at 89. The holding in *Carter* that it did supports the indisputable fact that a firearm may be carried on the person. It does not, however, provide any support for petitioners' contention that a firearm may not be carried by other means—such as in a vehicle.

[7] An earlier edition of *Black's Law Dictionary* lists three additional cases in the entry for "carry arms or weapons." *Black's Law Dictionary* 283 (3d ed. 1933). Those cases simi-

3. No court of appeals has adopted petitioners' construction of "carry" to include only carrying on the person and to exclude carrying in a vehicle. And most courts to reach the issue have concluded, like the courts below, that "carry" in Section 924(c) is used in its ordinary sense and can refer to a variety of means of carrying, such as carrying on the person and carrying in a vehicle.[8] Two courts of appeals,

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larly make clear that the entry should not be taken as authority for petitioners' argument. One of them, *State* v. *Roberts*, 39 Mo. App. 47 (1890), was brought under the same "upon the person" concealed weapons statute as *Murray*, and it involved a similar question regarding whether the defendant had to be shown to have the intent to carry the firearm for use as a weapon. The second cited case, *Owen* v. *State*, 31 Ala. 387 (1857), involved a prosecution brought under a statute that prohibited a person from "carry[ing] concealed *about his person* a pistol." *Id.* at 388 (emphasis added). The third cited case, *Moorefield* v. *State*, 73 Tenn. 348 (1880), arose under a statute that provided that "[n]o person shall publicly ride or go armed to the terror of the people; or privately carry any dirk, large knife, pistol, or any other dangerous weapon, to the fear or terror of any person." Tenn. Comp. Stat. § 4753 (Thompson & Steger eds., 1873). The case involved the question whether the defendant, who was armed with a pistol "for the purpose of joining in a chase for bear," could be said to have been acting "for evil purposes, or for the purpose of being armed, in the sense of the statute." 73 Tenn. at 348-349. The statute at issue does not use the term "carry," and the report does not specify how the defendant carried the pistol and whether he walked or used some other means of transportation to hunt the bear. As in the later edition of *Black's*, these citations establish that the dictionary entry was not intended to address whether the term "carry firearms" refers to carrying in a vehicle, as well as on the person.

[8] Aside from the First and Fifth Circuits in the instant cases, the Seventh, Fourth, Tenth, and Eleventh Circuits have taken this position. See, *e.g.*, *Wilson* v. *United States*, 125 F.3d

however, have concluded that, although Section 924(c) is not limited to carrying on the person, its application is limited to weapons that are immediately accessible or that satisfy a similar locution.[9] Petitioners suggest that, as an alternative to their entirely novel limitation on the term "carry" in Section 924(c) to mean "carry on the person," this Court could adopt the minority immediate accessibility limitation. See 96-1654 Pet. Br. 20-22; 96-8837 Pet. Br. 43-49.

No definition of "carry" in any dictionary supports the proposition that the word refers only to items—whether firearms or otherwise—that are immediately accessible. It is no doubt true that a weapon that is carried on the person will ordinarily be more or less

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1087, 1092 (7th Cir. 1997) ("We disagree with and cast aside the 'immediate access' theory as espoused by the Second, Sixth, and Ninth Circuits."); *United States* v. *Mitchell*, 104 F.3d 649, 653 (4th Cir. 1997) ("[T]he plain meaning of the term 'carry' * * * requires knowing possession and bearing, movement, conveyance, or transportation of the firearm in some manner."); *United States* v. *Miller*, 84 F.3d 1244, 1259 (10th Cir. 1996) ("[T]he government is required to prove only that the defendant transported a firearm in a vehicle and that he had actual or constructive possession of the firearm while doing so."), cert. denied, 117 S. Ct. 443 (1997); *United States* v. *Quinn*, 123 F.3d 1415, 1426, 1428 (11th Cir. 1997) (government must prove only "actual transporting" of firearm under carry prong; immediate availability requirement rejected).

[9] See *United States* v. *Foster*, No. 89-10405, 1998 WL 2521, *5 (9th Cir. Jan. 5, 1998) (en banc) ("immediately available"); *United States* v. *Cruz-Rojas*, 101 F.3d 283, 285 (2d Cir. 1996) ("within reach"). The Sixth Circuit had taken the position that immediate accessibility is required, see, *e.g.*, *United States* v. *Riascos-Suarez*, 73 F.3d 616, cert. denied, 117 S. Ct. 136 (1996), but the issue is currently under *en banc* submission in that circuit. *United States* v. *Malcuit*, 104 F.3d 880, vacated and rehearing en banc granted, 116 F.3d 163 (1997).

accessible. Nonetheless, even in the case of carrying on the person, a weapon may be carried though its accessibility is quite limited. For example, it would ordinarily be said that a person who places a weapon in a locked briefcase and then takes the briefcase in his hand as he walks down the street has "carried" the weapon. Cf. *State* v. *Molins*, 424 So. 2d 29, 30 (Fla. Dist. Ct. App. 1982) (gun encased in zippered gun bag enclosed in zippered canvas bag held to be "carried"); *Nardo* v. *State*, 819 P.2d 903, 905-906 (Alaska Ct. App. 1991) ("case law from around the country supports the proposition that a person who carries a deadly weapon in a purse, a briefcase, or even a paper bag commits the offense of carrying a concealed weapon"). Immediate accessibility is not a criterion of whether the weapon is carried—either in a vehicle or on the person.[10]

Indeed, contrary to the petitioners' alternative view, the immediate accessibility requirement requires "the obviously foolish conclusion" that if an object is not within reach, "the individual is no longer carrying the object, but is doing something else." *United States* v. *Miller*, 84 F.3d 1244, 1260 (10th Cir.), cert. denied, 117 S. Ct. 443 (1996). Adopting that conclusion would be directly contrary to the way the term is ordinarily used. For example, it would be perfectly natural for the driver of a car to say that he

[10] As the First Circuit noted, see 96-8837 J.A. 110, the location of the firearm in a vehicle and its accessibility to the defendant (although not necessarily at the moment of arrest) may be relevant under some circumstances in determining whether the "in relation to" element of Section 924(c) is satisfied. See *United States* v. *Miller*, 84 F.3d 1244, 1260 (10th Cir.), cert. denied, 117 S. Ct. 443 (1996). It has no bearing, however, on whether the weapon is "carried."

"carries" a spare tire in his trunk or a flashlight in his glove compartment for use in emergencies, regardless of the fact that those items may be thought not to be immediately accessible to the driver or a passenger. But cf. p. 43, *infra*. Neither petitioners nor any standard reference offers any reason to believe that the Congress that enacted Section 924(c) intended that the term "carries" in Section 924(c) should be construed in any more limited sense.

4. Petitioners contend (96-8837 Pet. Br. 19-20) that because Congress used the terms "possess" and "transport" in other firearms provisions, it thereby "precluded a broad definition of the term 'carry' that would be synonymous with either 'transportation' or 'possession.'" See also 96-1654 Pet. Br. 13-14. We do not urge, however, a meaning for the term "carry" that is interchangeable with either "possess" or "transport."

We do not argue that carrying a firearm in a vehicle is in any way synonymous with possessing it. A person may possess a firearm without touching it, moving it, bearing it, or carrying it; that is the focus of "possession" statutes like 18 U.S.C. 922(g), which makes it illegal for felons and others to "possess" firearms. It is true that, under any view of the meaning of the word "carry," the act of carrying a firearm—whether on the person or in a vehicle—also involves possession of it. But, under both petitioners' view and ours, proof of possession alone does not amount to proof of carrying.[11]

[11] Petitioners argue (96-8837 Pet. Br. 36) that "[i]n the context of a moving vehicle," our "definition of 'carry' swallows entirely any meaningful role for 'use,' since *any* possession of the firearm under that definition constitutes 'carrying.'" Of

As the dictionary definitions cited above demonstrate, "carry" and "transport" are closely related. The terms do, however, have different connotations, such that Congress wisely chose to use each term in an appropriate setting in the federal gun control statutes. A leading dictionary of synonyms explains:

> **Carry, bear, convey, transport, transmit** come into comparison when they mean to be, or to serve as, the agent or the means whereby something (or someone) is moved from one place to another. **Carry** originally and still often implies the use of a cart or carriage (now a train, ship, automobile, airplane or the like * * *) but it may imply a personal agent * * * **Transport** is used in place of *carry* or *convey* when the stress is on the movement of persons or goods from one place to another, as in vessels or in railway trains.

Webster's Dictionary of Synonyms 141 (1st ed. 1942). Thus, the word "transport" is most often used when the emphasis is on bare movement, bulk goods, and common carriers, while the broader term "carry"

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course, the same could be said of petitioners' theory: in the context of a moving person, petitioners' definition of "carry" swallows entirely any meaningful role for "use," since *any* possession of the firearm on a moving person constitutes "carrying." The point is that, under both definitions, there will be cases in which the firearm is used but not carried (when, for example, it is purposely displayed by a drug dealer conducting a transaction at his home), and cases in which it is carried but not used (when, for example, it is borne on the person or—in our view—in a vehicle). Cf. *Bailey*, 516 U.S. at 146 (interpreting "use" to require "active use" so that each term in statute has "a particular, nonsuperfluous meaning").

emphasizes personal agency and movement either on a vehicle or by hand.[12]

Those distinctions amply explain Congress's use of "transport" in Section 924(b) and other related statutes, but not in Section 924(c). Section 924(b) makes it a crime for any person to "ship[], transport[], or receive[] a firearm or any ammunition in interstate or foreign commerce" with the "intent to commit therewith" a serious offense or with "cause to believe that a[] [serious] offense * * * is to be committed therewith." 18 U.S.C. 924(b). The emphasis of that provision, therefore, "is on the movement of [firearms] from one place to another," specifically, in interstate or foreign commerce. *Webster's Dictionary of Synonyms* 141 (1st ed. 1942). Hence, a paradigmatic violation of Section 924(b) might involve a defendant placing firearms in a box and sending them by mail to a confederate in another state—conduct that in common parlance is most accurately described as "transporting" the firearms. By contrast, a paradigmatic violation of Section 924(c) involves a defendant who brings a firearm with him to the site of a drug deal. If the defendant does so in a vehicle, the defendant would be said to be carrying the firearm, not transporting it,

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[12] See also *Random House Dictionary of the English Language* 227 (1966) (noting that "transport" means to carry goods "usually by vehicle or vessel," while "carry" "means to take by means of the hands, of a vehicle, etc."); *Webster's Third New International Dictionary, Unabridged* 343 (1986) ("carry" means "moving to a location some distance away while supporting or maintaining off the ground" and "is a natural word to use in ref. to cargoes and loads on trucks, wagons, planes, ships, or even beasts of burden," while "transport refers to carriage in bulk or number over an appreciable distance and, typically, by a customary or usual carrier agency").

just as a person who brings a spare tire or flashlight with him in a vehicle would be said to be carrying those items, not transporting them. Congress chose in Sections 924(b) and 924(c) the verb which was most nearly suited to capture the run of cases. The use of the term "transport" in Section 924(b) and in some other statutes provides no basis for this Court to impose an additional requirement for "carrying" that finds no basis in the plain meaning of the term.

B. The Legislative History Of Section 924(c) Supports The Application Of That Prohibition To Carrying In A Vehicle As Well As On The Person

The legislative purpose underlying Section 924(c), as authoritatively expressed by the sponsor of the legislation and repeated during the debate surrounding its passage, is to encourage those who would commit the predicate offenses to leave their guns at home. That purpose would be disserved by petitioners' addition of an "on the person" element to the statute. On the other hand, Congress's purpose is precisely consonant with the ordinary meaning of the word "carries" to encompass carrying both on the person and in a vehicle.

1. As originally enacted in the Gun Control Act of 1968, Section 924(c) imposed criminal penalties providing that anyone who

> (1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or (2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years.

Pub. L. No. 90-618, § 102, 82 Stat. 1224.[13] Because the provision was offered as an amendment on the House floor, it was not the subject of any hearings or committee reports. See 114 Cong. Rec. 22,231 (1968); *Simpson* v. *United States*, 435 U.S. 6, 13 & n.7 (1978). The amendment's sponsor, Representative Poff, explained the amendment at some length when he introduced it. This Court has commented that Representative Poff's comments are "probative" and "entitled to weight" as an exposition of the statute's purposes. *Simpson*, 435 U.S. at 13. See also *id.* at 14; *Busic* v. *United States*, 446 U.S. 398, 405 (1980) (relying on "crucial material" encompassed in Rep. Poff's comments in construing Section 924(c)). His comments are inconsistent with petitioners' position in this case.

One of the crucial features of the Poff amendment, which became Section 924(c), was the one-year mandatory minimum sentence. That minimum was referred to repeatedly in the House debate, and it was central to Congress's choice of the Poff amendment over competing measures that were under consideration. In describing the impact of this crucial feature of his amendment, Rep. Poff explained that "[t]he effect of a minimum mandatory sentence in this case *is to persuade the man who is tempted to commit a Federal felony to leave his gun at home.*" 114 Cong. Rec. 22,231 (1968) (emphasis added). That comment was echoed by others during the debate. See *id.* at 22,242 (noting resolution of local group of law enforcement personnel "that carrying short firearms in motor ve-

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[13] The statute provided for enhanced penalties of five to twenty five years for second and subsequent convictions. § 102, 82 Stat. 1224.

hicles be classified as carrying such weapons concealed") (Rep. May), 22,243-22,244 (statutes would apply to "the man who goes out taking a gun to commit a crime") (Rep. Hunt), 22,244 ("Of course, what we are trying to do by these penalties is to persuade the criminal to leave his gun at home.") (Rep. Randall); see also *id.* at 22,236 ("We are concerned * * * with having the criminal leave his gun at home.") (Rep. Meskill).[14] As this Court explained in *Smith*, 508 U.S. at 240, Congress directed Section 924(c) at the "dangerous combination" posed by drugs and guns.

The Poff amendment was not intended to persuade defendants, if they wanted to take guns with them, to be sure to put them on the seat, in the glove compartment, or in the trunk of a vehicle. Rather, the expressed purpose of the statute was to persuade those who intend to commit such crimes "to leave [their] gun at home." 114 Cong. Rec. 22,231 (1968). To read

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[14] Discussing the fact that the Poff Amendment was limited to those who carried a gun unlawfully, Rep. Meskill stated that Section 924(c) "should apply to every person whether he carries a gun lawfully or unlawfully, if he commits a Federal felony *while he has a firearm on his person*." 114 Cong. Rec. 22,236 (1968) (remarks of Rep. Meskill) (emphasis added). That casual statement, however, by a Member who was not a sponsor or leading supporter of the Poff amendment, likely reflects nothing more than an assumption about how guns are frequently "carried," rather than the improbable judgment that that is the *only* way they may be carried. And in any event, Rep. Meskill also used broader language, stating that Congress should not create a class of people "who can go out with firearms *in their possession*, commit Federal felonies, and be immune from the provisions of [Section 924(c)]." *Ibid.* (emphasis added). That broader wording undercuts any significance that might otherwise attach to Rep. Meskill's use of the phrase "on his person."

into Section 924(c) an additional element requiring that the firearm be carried on the person—or even to add that the gun must have been immediately accessible to the defendant—would do violence to that purpose. The means by which the gun would be carried—whether on the person or in a vehicle—was irrelevant to the Congress that enacted the statute.

Indeed, the facts of these cases demonstrate that a gun carried in a vehicle—even in a manner that renders it arguably less than immediately accessible—presents precisely the "grave possibility of violence and death," *Smith*, 508 U.S. at 240, that Congress sought to prevent in enacting and subsequently amending Section 924(c)(1). Petitioner Cleveland and Gray-Santana admitted that they planned to steal drugs from drug dealers and, after arranging a meeting, procured guns, rope, and duct tape, and put all of those items in a bag in the trunk of their car. See pp. 6-7, *supra*. Because they were arrested at the rendezvous with the drug dealers but before they had the opportunity to consummate their plan, the guns were not immediately accessible at the time of arrest. Nonetheless, they undoubtedly carried the guns in their car during and in relation to a drug trafficking crime, and that carrying presented precisely the dangers of violence that would have been presented had they carried the guns in the same bag but proceeded on foot. Similarly, petitioner Muscarello had the gun available in his glove compartment for "protection" during his drug deals, see 96-8837 J.A. 12; he could have retrieved it at any moment to initiate or escalate the violence that all too frequently accompanies drug transactions. These scenarios are typical of cases arising under the "carry" prong of Section 924(c). Congress enacted Section 924(c) in order to deter

offenders from carrying guns in the ways petitioners did in these cases.

2. There is nothing elsewhere in the legislative history that contradicts Rep. Poff's statement regarding the statute's purpose or that indicates a congressional desire to limit the ordinary term "carry" to one particular means of carrying. As petitioners note (96-1654 Pet. Br. 18; 96-8837 Pet. Br. 33-34), a few Members of Congress referred to examples of individuals carrying guns on their persons during the debate over the Poff Amendment. In 1984, when Congress amended Section 924(c) in several significant respects as part of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, ch. X, § 1005(a), 98 Stat. 2138-2139,[15] the Senate Report similarly gives an example of "carrying" that refers to carrying on the person.[16] Those examples amply sup-

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[15] Following the 1984 amendment, Section 924(c) read in pertinent part as follows:

> Whoever, during and in relation to any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence, be sentenced to imprisonment for five years.

98 Stat. 2138.

[16] The report stated that "the requirement that the firearm's use or possession be 'in relation to' the crime would preclude its application in a situation where its presence played no part in the crime, *such as a gun carried in a pocket* and never displayed or referred to in the course of a pugilistic barroom fight." S. Rep. No. 225, 98th Cong., 1st Sess. 314 n.10 (1983) (emphasis added).

port the proposition on which we and petitioners agree—that one may violate the statute by carrying a firearm on his person. None of the comments, however, suggests that Congress—or, indeed, that any member of Congress—believed that that would be the *only* means of carrying that the statute prohibits. See *Wilson* v. *United States*, 125 F.3d 1087, 1090 (7th Cir. 1997). Nor do any of the cited comments suggest that Congress's purpose in enacting the statute was anything other than what Rep. Poff said it was.

In *Smith*, this Court considered and rejected an argument analogous to that advanced by petitioners here. It was argued in *Smith* that "use" of a firearm refers only to "the most familiar use to which a firearm is put—use as a weapon," and that use of a firearm in barter for drugs was accordingly not covered by Section 924(c). 508 U.S. at 230. Finding a "significant flaw" in that argument, *ibid.*, the Court held that "[b]oth a firearm's use as a weapon and its use as an item of barter fall within the plain language of § 924(c)(1)." *Id.* at 240. As the Court explained, "[t]hat one example of 'use' is the first to come to mind when the phrase 'uses . . . a firearm' is uttered does not preclude [the Court] from recognizing that there are other 'uses' that qualify as well." *Id.* at 230. Similarly, the recognition by Members of Congress that a firearm may be carried on the person does not lead to petitioners' conclusion that Congress intended to exclude other means of carrying from the scope of the statute. As discussed above, the purpose of the statute and its plain language are quite to the contrary.

3. The enactment history of Section 924(c) also disposes of another of petitioners' contentions. Petitioners argue (96-1654 Pet. Br. 15-16; 96-8837 Pet. Br. 26-29) that the mandatory minimum five-year

sentence—which may be enhanced depending on the type of firearm and whether the offense is a repeat offense—imposed for violations of Section 924(c) militates in favor of limiting the statutory prohibition to cases in which the firearm is carried on the person. On that basis, petitioners argue that Congress would have wanted such a severe sanction to be limited to a relatively small number of cases.

Petitioners' reasoning is unsound. Congress no doubt specified severe sanctions for violations of Section 924(c) because Congress wanted sufficient deterrence "to persuade the man who is tempted to commit a Federal felony to leave his gun at home," in Representative Poff's words. 114 Cong. Rec. 22,231 (1968). Although petitioners may disagree with Congress's policy judgment on that point, that disagreement does not provide a basis to limit the statute's reach by engrafting on to it an "on the person" element.

In any event, the penalties to which petitioners refer would be a particularly unsound foundation for interpretation of the term "carries" in the statute. At the time Congress enacted the original "carries a firearm" prohibition in Section 924(c) in 1968, the penalties to which petitioners refer were not part of the statute. Instead, the statute was enacted with a more flexible penalty scheme that provided for a sentence of one to ten years' imprisonment for a first offense, with a sentence of five to twenty-five years for a second or subsequent offense. § 102, 82 Stat. 1224. It would be highly anachronistic to base any construction of the term "carries" in Section 924(c) on a penalty scheme that was added many years after

the basic prohibition on "carr[ying] a firearm" was included in the statute.[17]

C. A Comparison Of Section 924(c) To Other Statutory Models Supports A Construction Of "Carry" To Cover Carrying In A Vehicle

It is a cardinal principle of statutory construction that language used in a statute should be read to harmonize with similar usages in related bodies of law. *Reno* v. *Koray*, 515 U.S. 50, 56-57 (1995); *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 407-408 (1991). Here, that principle is significant because the word "carry" appears in numerous firearms laws that plainly reach carrying in a car. Moreover, Congress had available to it, but chose not to employ, a well-established model—state concealed weapons statutes—had it wished to impose the "on the person" limitation petitioners support.

1. In other statutes, Congress frequently uses the word "carry" in its ordinary meaning to refer to

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[17] Petitioners also argue (96-1654 Pet. Br. 16; 96-8837 Pet. Br. 29) that Sentencing Guidelines § 2D1.1(b)(1), which provides for a two-level enhancement if a firearm is "possessed" during a drug trafficking crime, is of relevance to the analysis. Congress's intent in using the term "carries" in Section 924(c) in 1968, however, cannot be illuminated by reference to a Guidelines provision first adopted by the Sentencing Commission decades later. In any event, the Guidelines provision addresses a far broader set of circumstances than does Section 924(c). In order to qualify for the enhancement, it need not be shown that the defendant either used a firearm or carried it (on the person or otherwise) and it need not be shown that it was "during and in relation to" a drug trafficking offense; the Guidelines enhancement applies if the defendant merely "possessed" the firearm, "unless it is clearly improbable that the weapon was connected with the offense." Guidelines § 2D1.1 comment., appl. note 3.

carrying both on the person and in a vehicle. There are at least 34 federal statutes that authorize various federal law enforcement and security agents "to carry firearms."[18] Among those covered by such authorizations are many categories of agents who can be expected to make extensive use of vehicles, such as

[18] These include 7 U.S.C. 2270 (agents employed by Inspector General of Department of Agriculture), 7 U.S.C. 2274 (Department of Agriculture quarantine agents), 8 U.S.C. 1357(a) (INS agents), 10 U.S.C. 1585 (civilian investigative officers of Department of Defense), 14 U.S.C. 95 (civilian special agents of the Coast Guard), 16 U.S.C. 1a-6(b) (National Park Service agents), 16 U.S.C. 559c(1) (Forest Service agents), 16 U.S.C. 831c-3(b)(2)(D) (TVA law enforcement agents), 16 U.S.C. 3375(b) (fish and wildlife agents), 18 U.S.C. 3050 (Bureau of Prisons agents), 18 U.S.C. 3052 (FBI agents), 18 U.S.C. 3053 (U.S. Marshals), 18 U.S.C. 3056(c)(1)(B) (Secret Service agents), 18 U.S.C. 3061(a)(4) (Postal Inspectors), 18 U.S.C. 3063(a)(1) (EPA agents), 18 U.S.C. 3603(9) (probation officers), 19 U.S.C. 1589a(1) (Customs Service agents), 21 U.S.C. 372(e)(1) (FDA investigators and inspectors), 21 U.S.C. 878(a)(1) (DEA agents), 22 U.S.C. 2709(a)(4) (Department of State and Foreign Service special agents), 25 U.S.C. 2803(1) (Bureau of Indian Affairs agents), 26 U.S.C. 7608(a)(1) (IRS and ATF agents), 28 U.S.C. 566(d) (U.S. Marshals Service), 38 U.S.C. 902(b)(3) (Department of Veterans Affairs police officers), 40 U.S.C. 13n(a)(5) (Marshal of the Supreme Court and Supreme Court Police), 40 U.S.C. 318d (GSA special police), 42 U.S.C. 2201(k) (Nuclear Regulatory Commission agents), 42 U.S.C. 2456 (NASA agents), 42 U.S.C. 7270a(1) (Strategic Petroleum Reserve guards), 43 U.S.C. 1733(c)(1) (local law enforcement agents under authority of Bureau of Land Management), 49 U.S.C. 44,903(d)(1) (air transportation security agents), 50 U.S.C. 403f(d) (CIA agents), 50 U.S.C. App. 2411(a)(3)(B)(iii) (export enforcement agents). See also Congressional Operations Appropriations Act, Pub. L. No. 104-53, Tit. III, § 313(a), 109 Stat. 538 (Sergeant at Arms of the House of Representatives).

agents of the FBI, 18 U.S.C. 3052, the Secret Service, 18 U.S.C. 3056(c)(1)(B), and the CIA, 50 U.S.C. 403f(d).

These statutes establish that Congress typically and regularly uses the phrase "carry firearms" to include a variety of means by which firearms may be carried. The obvious purpose of the authorization to carry firearms is to ensure that federal agents who require firearms to perform their functions may carry them on their persons, in vehicles, or by whatever means is appropriate, without regard to restrictive state or local gun control regulations. Yet, under petitioners' view, these authorization statutes would contain inexplicable gaps. Congress would have intended to authorize federal law enforcement agents to carry their guns on their persons, but not to authorize them to remove such guns upon entering a car and lay them on the seat, place them in a locked glove compartment, or put them in the trunk. That is not a plausible view of Congress's intent.[19]

[19] Other federal statutes similarly make clear that Congress typically uses similar phrases without restriction to refer to a variety of means by which weapons can be carried. For example, under 15 U.S.C. 5902(a), a crew member of an armored car company licensed by one State "to carry a weapon * * * shall be entitled to lawfully carry any weapon to which such license relates in any State while such crew member is acting in the service of such company." Under petitioners' view, Congress would thereby have required reciprocity among States only when the crew member carries a weapon on the person; if the crew member lays it down or otherwise stores it in the armored car, the statute would have no application. See also 18 U.S.C. 844(h)(2) (enhanced penalty for a person who "carries an explosive during the commission of any felony which may be prosecuted in a court of the United States"); 18 U.S.C. 967 (authority during wartime in which United States is neutral to forbid vessel to sail if vessel is reasonably believed "to carry

The authorization statutes also establish that no implicit "immediately accessible" qualification should be engrafted on to the statutory term "carry firearms." Congress could not have intended to authorize federal law enforcement agents to carry firearms only if the firearms may be viewed as being immediately accessible. To the contrary, there are circumstances in which it would be far safer for an agent to keep a firearm securely stowed in a locked glove compartment or trunk of a car than to keep it in a more immediately accessible location. Congress surely did not intend to withhold its authorization from such prudent practices.

2. Numerous state concealed weapons statutes similarly demonstrate that the word "carry," used in conjunction with a reference to firearms or other weapons, has a clear legal meaning, and that that meaning is entirely in accord with the ordinary meaning of the word "carry" to include carrying on the person and in a vehicle. Although it is difficult to summarize the wide variety of state statutes on the subject,[20] it appears that 24 States and the District of

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fuel, arms, ammunition, men, supplies, dispatches, or information"). Of course, a great many statutes that use the word "carry" or its derivatives without mention of firearms are clearly intended to include carrying in vehicles. See, *e.g.*, 18 U.S.C. 32(a)(4) (prohibiting placing destructive device in proximity to "any cargo carried or intended to be carried on any * * * aircraft"); 18 U.S.C. 659 ("The carrying * * * of any [converted property] in interstate or foreign commerce * * * shall constitute a separate offense."); 18 U.S.C. 1694 (making it a crime for someone who has charge of a conveyance over which the mail "is regularly carried" to "carr[y], otherwise than in the mail, any letters or packets").

[20] Categorizing the state statutes is difficult in part because States often have overlapping prohibitions that impose differ-

Columbia prohibit carrying a firearm (usually, a concealed firearm) by expressly using a phrase such as "on or about the person" or the like.[21] The use of the

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ent requirements on carrying different sorts of weapons in different circumstances. For example, in addition to the "concealed upon or about his person" statute cited in note 21, *infra*, Maryland also has a statute making it a crime to "wear, carry, or transport any handgun, whether concealed or open, upon or about his person" and to "wear, carry or knowingly transport any handgun, whether concealed or open, in any vehicle." Md. Ann. Code of 1957, art. 27, § 36B(b) (1996 & Supp. 1997). In addition, many States have statutes prohibiting the carrying of firearms in game preserves, etc. See, *e.g.*, S.C. Code Ann. § 16-23-20 (Law. Co-op. 1985) (unlawful "to take, attempt to take, or hunt" raccoons, opossums, or fox "when carrying on one's person or in one's vehicle a firearm"); Wash. Rev. Code Ann. § 77.16.110 (West 1996 & Supp. 1998) ("unlawful to carry firearms * * * upon a game reserve, except on public highways"). Those statutes are generally consistent with our view that the term "carry" is used without qualification to refer to carrying both in a vehicle or on the person, but we have not attempted an extensive categorization of such statutes. See also, *e.g.*, *Commonwealth* v. *Bigelow*, 378 A.2d 961 (Pa. Super. Ct. 1977) (prosecution for carrying in vehicle under statute prohibiting "carry[ing] a firearm * * * upon the public streets").

[21] Ala. Code § 13A-11-50 (1994 & Supp. 1997) ("carries concealed about his person"); Colo. Rev. Stat. Ann. § 18-12-105 (Bradford 1986 & Supp. 1996) ("[c]arries a firearm concealed on or about his or her person"); Conn. Gen. Stat. Ann. § 53-206 (West 1994) ("carries upon his person"); Del. Code Ann. tit. 11, §§ 1442, 1443 (1995) ("carries * * * upon or about the person"); D.C. Code Ann. § 22-3204 (1996) ("carry * * * on or about their person"); Fla. Stat. Ann. § 790.01 (West 1992 & Supp. 1998) ("carry * * * on or about his person"); Ga. Code Ann. § 16-11-126 (1996 & Supp. 1997) ("carries about his or her person"); Idaho Code § 18-3302(1) and (14) (1997) (authorizing licenses to "carry a weapon concealed on his person" and prohibiting unlicensed carrying); Kan. Stat. Ann. § 21-4201(4)

qualifying "on the person" phrase in all of these statutes would be inexplicable under petitioners' view, since petitioners' essential claim is that the qualification "on the person" is implicit in each such statute. These statutes demonstrate that, where a legislature intends to limit a "carry firearms" statute to carrying on the person, the conventional mode of accom-

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(1995 & Supp. 1996) ("carrying * * * concealed on one's person"); Ky. Rev. Stat. Ann. § 527.020 (Michie 1990 & Supp. 1996) ("carries * * * on or about his person"); La. Rev. Stat. Ann. § 14:95(A)(1) (West 1986) ("intentional concealment * * * on one's person"); Me. Rev. Stat. Ann. tit. 25, § 2001 (West 1988) ("conceal about his person"); Md. Ann. Code of 1957, art. 27, § 36(a)(1) (1996) ("wear or carry * * * concealed upon or about his person"); Mo. Ann. Stat. § 571.030.1(1) (West 1995) ("carries concealed upon or about his person"); Mont. Code Ann. § 45-8-316 (1997) ("carries or bears concealed upon his person"); Neb. Rev. Stat. § 28-1202(1) (1995) ("carries * * * concealed on or about his or her person"); Nev. Rev. Ann. Stat. § 202.350.1(b) (Michie 1997) ("carry concealed upon his person"); N.M. Stat. Ann. § 30-7-1-2 (Michie 1994) ("carrying" means "having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use"); N.C. Gen. Stat. § 14-269(a) (1993 & Supp. 1997) ("carry concealed about his person"); Ohio Rev. Code Ann. § 2923.12(A) (Anderson 1996) ("carry or have, concealed on his or her person or concealed ready at hand"); Okla. Stat. Ann. tit. 21, §§ 1272, 1290.4 (West 1983 & Supp. 1998) ("carry upon or about his person, or in a purse or other container belonging to the person"); S.C. Code Ann. § 16-23-20 (Law. Co-op. 1985) ("carry about the person"); Tex. Penal Code Ann. § 46.02(a) (West 1994) ("carries on or about his person"); Va. Code Ann. § 18.2-308 (1996) ("carries about his person"); W. Va. Code §§ 61-7-2(10), 61-7-3 (1997) (prohibiting "carr[ying] a concealed deadly weapon" and stating that "[a] deadly weapon is concealed when it is carried on or about the person" so that another person would not be on notice of its presence).

plishing that end is to say so specifically in the language of the statute.[22]

An additional 15 States prohibit carrying a firearm by using both an "on or about the person" qualification and an "in a vehicle" qualification.[23] Many of

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[22] Frequently States construe the statutory phrase "about the person" in a concealed weapons statute to impose an "immediate accessibility" requirement. See, *e.g.*, *State* v. *McNary*, 596 P.2d 417, 420 (Idaho 1979) (citing cases holding that carrying "upon or about [the] person" includes "not only when [the defendant] physically is carrying it in his clothing or in a handbag of some sort, but also when he goes about with the weapon in such close proximity to himself that it is readily accessible for prompt use"). The "immediate accessibility" requirement in any event is consistent with a major purpose of concealed weapons statutes, the "common thrust" of which is "to protect the public by preventing an individual from having on hand a deadly weapon of which the public is unaware, and which may be used in a sudden heat of passion." *State* v. *McAdams*, 714 P.2d 1236, 1238 (Wyo. 1986); see 79 Am. Jur. 2d *Weapons and Firearms* § 8, at 12 (1975). As we have argued above, the purpose of Section 924(c)—to deter those who would deal drugs from bringing their guns with them—would be disserved by adding that requirement.

[23] See Ariz. Rev. Stat. Ann. § 13-3102 (West 1989 & Supp. 1997) ("[c]arrying a deadly weapon without a permit * * * concealed on his person; or * * * concealed within immediate control of any person in or on a means of transportation"); Ark. Code Ann. 5-73-120 (Michie 1993 & Supp. 1995) ("A person commits the offense of carrying a weapon if he possesses a handgun * * * on or about his person, in a vehicle occupied by him, or otherwise readily available for use with a purpose to employ it as a weapon against a person"); Cal. Penal Code § 12,025 (West 1992 & Supp. 1998) ("[c]arries concealed within any vehicle * * * [or] * * * concealed upon his or her person"); Haw. Rev. Stat. Ann. §134-51 (Michie 1995 & Supp. 1997) ("carries * * * upon the person's self or within any vehicle used or occupied by the person"); 720 Ill. Comp. Stat.

these statutes specifically refer to carrying in a vehicle because they limit the prohibition somewhat differently in that setting—frequently including some kind of immediate accessibility requirement—than when the weapon is carried on the person. For example, the Arizona statute prohibits "[c]arrying a deadly weapon * * * concealed on his person; or * * * concealed within immediate control of any person in or on a means of transportation." Ariz. Rev. Stat. Ann. § 13-3102 (West 1989 & Supp. 1997). But these statutes too, like those that merely prohibit carrying "on the person," demonstrate the ordinary understanding of state legislatures that a weapon may be carried either on the person or in a vehicle.

Finally, five States appear simply to prohibit the carrying of concealed weapons, with no "on the person" or "in a vehicle" qualification.[24] Of those five States, three have construed their statutes to prohibit carrying in automobiles, as well as on the person.[25] The other two States appear never to have considered the question whether the term "carries" includes carrying in a vehicle.[26] No State—indeed, no

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Ann. § 5/24-1(4) (West 1993) ("[c]arries or possesses in any vehicle or concealed on or about his person"); Ind. Code Ann. § 35-47-2-1 (Michie 1994) ("carry * * * in any vehicle or on or about his person"); Mich. Stat. Ann. § 28.424 (Law. Co-op. 1990) ("carry * * * on or about his or her person, or * * * in any vehicle"); Minn. Stat. Ann. § 624.714 (West 1987 & Supp. 1998) ("carries, holds or possesses * * * in a motor vehicle * * * or on or about the person's clothes or the person"); N.H. Stat. Ann. § 159:4 (Michie 1994 & Supp. 1997) ("carry * * * in any vehicle or concealed upon his person"); N.D. Cent. Code §§ 62.1-02-01, 62.1.02-02, 62.1-02-10 (1995 & Supp. 1997); Or. Rev. Stat. Ann. § 166.250 (1991 & Supp. 1996) ("carries * * * concealed upon the person * * * [or] concealed and readily accessible to the person within any vehicle which is under the person's control or direction"); 18 Pa. Cons. Stat. Ann. § 6106(a) (West 1983 & Supp. 1997) ("carries * * * in any vehicle * * * or * * * concealed on or about his person"); R.I. Gen Laws § 11-47-8 (1994 & Supp. 1997) ("carry * * * in any vehicle or conveyance or on or about his or her person"); S.D. Codified Laws § 22-14-9 (Michie 1988) ("carries * * * on or about his person * * * or * * * concealed in any vehicle operated by him"); Wash. Rev. Code Ann. § 9.41.050 (West 1988 & Supp. 1998) ("carry * * * concealed on his or her person * * * [or] in any vehicle").

[24] See Miss. Code Ann. § 97-37-1 (1994 & Supp. 1997) ("carries, concealed in whole or in part"); Tenn. Code Ann. § 39-17-1307(1) (1997) ("carries with the intent to go armed"); Utah Code Ann. § 76-10-504(1)(b) (1990 & Supp. 1997) ("carries"); Vt. Stat. Ann. tit. 13, § 4003 (1974) ("carries * * * with the intent or avowed purpose of injuring a fellow man"); Wyo. Stat. Ann. § 6-8-104(a) (Michie 1997) ("wears or carries").

[25] See *In the Interest of L.M., J.R., S.T. & D.S.*, 600 So. 2d 967, 970-971 (Miss. 1992) (weapon secured under the hood of a car was "carried" under state concealed weapons provision); Miss. Code. Ann. § 97-37-2 (1994 & Supp. 1997) (recently enacted exclusion to state concealed weapons statute providing that "[i]t shall not be a violation * * * for any person * * * to carry a firearm or deadly weapon concealed in whole or in part * * * within any motor vehicle"); *State* v. *Williams*, 636 P.2d 1092, 1094 (Utah 1981) (stating that "'carrying' necessarily must include more than when the weapon is in physical contact with the body" and that a defendant "will be deemed to be 'carrying' [a] weapon" if it "is shown to be under [the] defendant's control and within his immediate, easy or ready access"); *State* v. *Warr*, 604 S.W. 2d 66, 68 (Tenn. Ct. App. 1980) (pistol under seat held to be carried under state concealed weapons statute).

[26] There appear to be no reported cases of any kind applying the Vermont or Wyoming statutes. *Cf. State* v. *McAdams*, 714 P.2d 1236, 1238 (Wyo. 1986) (rejecting state constitutional challenge to state concealed weapons statute).

court anywhere, to our knowledge—has adopted petitioners' argument that the term "carry," when not limited by a term such as "on the person," does not apply to firearms carried in an automobile.[27]

D. Nothing In *Bailey* Supports Or Compels The Conclusion That "Carrying" A Firearm In A Vehicle Requires Immediate Accessibility.

Petitioners argue that their proposal to engraft an "on the person" element onto Section 924(c) is supported by this Court's decision in *Bailey*. According to petitioners, "*Bailey* established that 'use' of a firearm under section 924(c)(1) requires a narrow definition—'active employment' of the weapon—not a broad definition, such as merely placing the gun 'at the ready,' as the government had argued." 96-1654 Pet. Br. 15. Petitioners argue that, "in order to preserve the parallel structure of the statute, the term 'carries' in section 924(c)(1) should also be construed narrowly." *Ibid.*

This Court, however, did not construe the term "use" to mean "active use" in *Bailey* because of some overarching principle of narrow construction that is unique to Section 924(c). Indeed, any such principle

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[27] The concealed weapons statutes in six States do not use the word "carry." See Alaska Stat. § 11.61.220(a)(1) (Michie 1996) ("possesses a deadly weapon * * * that is concealed on the person"); Iowa Code Ann. § 724.4 (West 1993) ("goes armed with * * * on or about the person, or * * * carries or transports in a vehicle"); Mass. Ann. Laws ch. 269, § 10(a) (Law. Co-op. 1992) ("knowingly has in his possession; or knowingly has under his control in a vehicle"); N.J. Stat. Ann. § 2C:39-5 (West 1989) ("knowingly has in his possession"); N.Y. Penal Law §§ 265.01-265.03 (West 1989) ("possesses" or "knowingly has in his possession"); Wis. Stat. Ann. § 941.23 (West 1996) ("goes armed with").

would be inconsistent with this Court's decisions in *Smith* and in *Deal* v. *United States*, 508 U.S. 129 (1993), in both of which the Court rejected a narrower construction of a key term in Section 924(c) in favor of a broader one. What *Bailey*, *Smith*, and *Deal* do stand for is the principle that the words Congress used in Section 924(c), like the words it has used in other statutes, should be construed in their ordinary meanings, informed by the statute's history and context. As we have argued above, all of those factors point decisively toward construing the word "carry" as used in Section 924(c) in its ordinary meaning, to include both carrying in a vehicle and carrying on the person.

E. Because The Ordinary Tools Of Statutory Construction Make The Meaning Of The Term "Carry" In Section 924(c) Clear, The Rule Of Lenity Has No Application In This Case

Petitioners contend (96-1654 Pet. Br. 19-20) that engrafting an "on the person" element to Section 924(c) is "*at least* * * * reasonable," that "the statute is therefore *at least* ambiguous," and that the rule of lenity therefore requires this Court to adopt their construction. See also 96-8837 Pet. Br. 39-42.

"The mere possibility of articulating a narrow construction [for Section 924(c)(1)], however, does not by itself make the rule of lenity applicable." *Smith*, 508 U.S. at 239. Nor is a statute "ambiguous for purposes of lenity merely because there is a division of judicial authority over its proper construction." *Reno* v. *Koray*, 515 U.S. 50, 64-65 (1995) (internal quotation marks omitted). As the Court explained in *Moskal* v. *United States*, 498 U.S. 103, 108 (1990), "[b]ecause the meaning of language is inherently contextual, [the Court has] declined to deem a statute

'ambiguous' for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the government." Instead, the rule of lenity comes into play only when, after "[a]pplying well-established principles of statutory construction," *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 410 (1991), a court "can make no more than a guess as to what Congress intended." *Reno*, 515 U.S. at 65 (internal quotation marks omitted); see also *Smith*, 508 U.S. at 239, quoting *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (the "rule [of lenity] is reserved for cases where, [a]fter seiz[ing] every thing from which aid can be derived, the Court is left with an ambiguous statute") (internal quotation marks omitted); *Chapman* v. *United States*, 500 U.S. 453, 463 (1991) (Lenity applies only where there remains a "grievous ambiguity or uncertainty in the language and structure of the Act.") (internal quotation marks omitted).

This is not such a case. To paraphrase this Court's decision in *Smith*, the "common usage and dictionary definitions of the term[] '[carries] . . . a firearm,'" *Smith*, 508 U.S. at 240, embrace any carrying of a firearm that facilitates a drug trafficking offense, regardless of whether the carrying is done on the person or in a vehicle or some other way. Moreover, Congress's purpose was to impose heightened sanctions when a defendant employs the "dangerous combination" of firearms and narcotics trafficking. *Ibid.* That purpose is inconsistent with an interpretation of the statute that singles out a particular mode of carrying (on the person) while leaving others unpunished.

F. Under A Proper Interpretation Of Section 924(c), Petitioners Carried Firearms

1. In No. 96-1654, petitioner Muscarello was convicted on his guilty plea to violating Section 924(c). At the plea hearing, the government submitted a factual statement signed by petitioner. The statement recited that petitioner kept a loaded firearm in the locked glove compartment of his truck for protection in relation to his drug dealing offense. Although the district court later discounted Muscarello's agreement to the "in relation to" element of the offense, see 96-1654 Pet. App. 10a-11a, the court of appeals reversed that decision by the district court, 96-1654 Pet. App. 5a. Petitioner did not present any question relating to that holding of the court of appeals in his petition for certiorari. Accordingly, the only remaining issue regarding petitioner's conviction concerns whether the loaded firearm found in the locked glove compartment of his truck can be said to have been carried for purposes of Section 924(c). If this Court agrees with us that an individual carries a gun in a vehicle under Section 924(c) by transporting it there, then the Fifth Circuit's judgment in this case should be affirmed.

Muscarello could obtain outright reversal only if this Court holds that the term "carries" in Section 924(c) requires proof that the firearm was carried on the person of the defendant—a holding adopted by no court of appeals. If, in contrast, this Court holds that a firearm may be carried in a vehicle under Section 924(c), but only if it is immediately accessible, then the case should be remanded to the Fifth Circuit. Because Muscarello's conviction was entered on his guilty plea, there has been no factual development in

this case on how accessible the firearm in the glove compartment was. Ordinarily, a locked glove compartment would provide little barrier to a defendant who wanted ready access to a firearm.[28] Accordingly, the case would have to be remanded to determine whether the firearm was immediately accessible.

2. In No. 96-8837, petitioners admitted that they purchased several guns on the day of a planned drug transaction so that they could steal the cocaine from the sellers. They also admitted that they carried the guns to the trunk of a car and put them in the trunk, before entering the car and driving to the scene of the drug transaction. See 96-8837 J.A. 13, 14-16.[29] Petitioners also pleaded guilty to attempting to possess

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[28] See, *e.g.*, *United States* v. *Holifield*, 956 F.2d 665, 668-669 (7th Cir. 1992) ("it would have taken only a few seconds for [the defendants] to remove the keys from the ignition and unlock" the compartment); *Ensor* v. *State*, 403 So. 2d 349, 354 (Fla. 1981) ("on or about the person" in concealed weapons statute includes "the interior of an automobile and the vehicle's glove compartment, whether or not locked"); *State* v. *Walton*, 429 N.W.2d 133 (Iowa 1988) (revolver in locked glove compartment is readily accessible).

[29] Although Cleveland plainly admitted to carrying the firearms in a bag to the car, Gray-Santana appears to have directly admitted only that, earlier on the day of the planned drug transaction, he purchased one of the guns that were ultimately found in the car in order to facilitate the planned theft of the drugs. See 96-8837 J.A. 26, 27. Of course it could be readily inferred that, after purchasing the gun, he carried it at least to the point where he could give it to Cleveland to put in the car. Nonetheless, even if Gray-Santana did not himself physically carry the gun on his person at any time, he would be guilty of violating Section 924(c) as an aider and abettor of Cleveland. See 18 U.S.C. 2.

cocaine with intent to distribute it, in violation of 21 U.S.C. 846. 96-8837 J.A. 16, 28.

Under any possible construction of the word "carry" in Section 924(c), petitioners' admissions regarding the purchase and carrying of the guns to the automobile—even aside from their carrying of the guns in the automobile—are sufficient to constitute an admission that they carried the firearms during and in relation to the drug trafficking offense for which they were convicted. Petitioners' convictions therefore should be affirmed.

We acknowledge that we did not argue in our opposition to the petition for certiorari in No. 96-8837 that the Section 924(c) convictions of petitioners Cleveland and Gray-Santana would have to be affirmed regardless of this Court's ruling in their case. See Sup. Ct. R. 15.2. Nonetheless, upon a closer examination of the record, it has become apparent that petitioners' convictions could not be reversed under any interpretation of Section 924(c) presented by the parties in these cases. Accordingly, this Court may wish to dismiss the writ of certiorari in No. 96-8837 as improvidently granted.[30]

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[30] With respect to petitioner Cleveland, this case arises from his motion under 28 U.S.C. 2255 in district court. See p.8 & note 1, *supra*. With respect to petitioner Gray-Santana, it has never been finally determined whether this case has proceeded under Section 2255 or instead whether it should be viewed as having arisen from a motion to withdraw a guilty plea under Rule 32(e) or as a motion to correct sentence under Federal Rule of Criminal Procedure 35(c). See note 1, *supra*. Because it rejected petitioners' claims on their merits, the court of appeals "d[id] not address any potential jurisdictional question stemming from Cleveland's § 2255 appeal." 96-8837 J.A. 104. Insofar as No. 96-8837 arises from the Section 2255 motions of

CONCLUSION

The judgments of the courts of appeals should be affirmed.

Respectfully submitted.

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one or both petitioners, the appropriate disposition of the case may be affected by this Court's decision in *Bousley* v. *United States*, No. 96-8516. That case involves questions that arise in an analogous setting under Section 2255 regarding whether a decision that would narrow the substantive scope of a federal criminal statute has retroactive application in a case brought under Section 2255, whether a guilty plea bars a defendant's claim that the acts he committed are not a federal crime, and whether a defendant may make such a claim notwithstanding the failure to raise it on direct appeal.

APPENDIX

Section 924(c) of Title 18 of the United States Code provides in relevant part:

(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.